

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Securities Agent
License of Marcos Ed Martinez, DOC
File No. SE2209057/DPK

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Allan W. Klein on January 29, 2003, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department").

There was no appearance by or on behalf of the Respondent, Marcos Ed Martinez. The record closed at the conclusion of the prehearing conference on January 29, 2003.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue presented in this case is whether the Respondent, Marcos Ed Martinez, has subjected his license to a disciplinary action pursuant to Minn. Stat. Sec. 80A.07, subd. 1(4) and 1(6) because of actions taken against him by the NASD and SEC.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent has been licensed in Minnesota with Platinum Investment Corporation as a securities salesperson since May 1, 2002.

2. The Securities & Exchange Commission has obtained a preliminary injunction against Respondent in the U.S. District Court for the Southern District of New York on August 9, 2002.

3. Respondent's registration with the National Association of Securities Dealers ("NASD") as a general securities representative was revoked effective October 15, 2002.

4. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges in this matter was served upon the Respondent by first class U.S. mail on December 23, 2002, at an address in Florida, and also at two addresses in New York. One of these was the last known address for the Respondent maintained at the Department of Commerce. All three envelopes were returned marked "Unable to Forward, Return to Sender."

5. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges served on the Respondent contained the following informational notice in bold type:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter without the prior consent of the judge or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's securities agent license may be revoked or suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.^[1]

6. Respondent did not personally appear at the January 29, 2003 Prehearing Conference or have an appearance made on his behalf. The Respondent did not contact

the Department or the Administrative Law Judge prior to the Prehearing Conference to request a continuance or any other relief. No Notice of Appearance was filed by Respondent in this matter.

7. Because Respondent failed to appear at the Prehearing Conference, the Respondent is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 80A.07.

2. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. By having his registration with the NASD revoked, the Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 80A.07, subd. 1(4) and 1(6).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the securities agent license of Marcos Ed Martinez.

Dated: January 31, 2003

S/ Allan W.Klein

ALLAN W. KLEIN

Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

Reported: Default.

^[1] Notice of and Order for Hearing at p. 5.